

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:07CV136-MU-02

JOSEPH JAMES HARGROVE,
Petitioner,

v.

ROBERT SMITH, Supt.,
Respondent.

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ORDER

THIS MATTER comes before the Court on Petitioner's Petition Under 28 U.S.C. §2254 For Writ Of Habeas Corpus . . . ,” filed December 17, 2007; and on Respondent's "Motion For Summary Judgment . . . ,” filed January 23, 2008.

After having carefully reviewed those pleadings, it appears that Respondent may be entitled to a summary judgment as a matter of law.

PETITIONER HARGROVE, PLEASE READ THIS:

Petitioner is advised that under the provisions of Rule 56(e) of the Federal Rules of Civil Procedure, he is required to submit documents, affidavits, or unsworn declarations made under penalty of perjury, in opposition to the Motion for Summary Judgment and supporting documents filed by the respondent. Rule 56(e) reads in pertinent part as follows:

When a motion for summary judgment is made and supported [by affidavits], an adverse party may not rest upon the mere allegations

or denials of his pleadings, but his response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing that there is genuine issue for trial. If he does not respond, summary judgment, if appropriate, shall be entered against him.

This rule requires that if Petitioner has any evidence to offer to counter the evidence contained in the Motion for Summary Judgment and supporting documents filed by Respondent, he must present it to the Court in the form of documents, affidavits, or unsworn declarations under penalty of perjury. An affidavit is a written statement made under oath; that is, a statement prepared in writing by the declarant and sworn before a Notary Public. If Petitioner chooses, he may instead submit an unsworn declaration and state the following with the date and his signature:

"I declare under penalty of perjury that the foregoing is true and correct."

Petitioner is further hereby advised that he has twenty (20) days from the filing of this Order in which to file such documents, affidavits, or unsworn declarations in opposition to Respondent's Motion for Summary Judgment. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO SUMMARY JUDGMENT.**

NOW, THEREFORE, IT IS HEREBY ORDERED that Petitioner has twenty (20) days from the filing of this Order in which to provide his own documents, affidavits, or declarations countering the evidence offered by Respondent's Motion for Summary Judgment.

SO ORDERED.

Signed: March 10, 2008

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

